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EXAMINER

JOHNSON, VICKY A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3682

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/765,240

Applicant(s)

MARICH, RANDALL M.

Examiner

Vicky A. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 10-24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 26 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION***Drawings***

1. The drawings are objected to under 37 CFR 1.84(h)(5) because Figure 3 show(s) modified forms of construction in the same view. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "222" has been used to designate both the cover in Figure 3 and the cover in Figure 6. These covers cannot be the same because the removable tang is radial in Figure 3 and axial in Figure 6. Corrected drawing sheets in compliance

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with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the guard plate including a plurality of apertures having portions of the shield positioned in the apertures must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

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of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 14 and 22 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the cover, does not reasonably provide enablement for the guard plate including a plurality of apertures having portions of the shield positioned in the apertures. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims.

The specification does not disclose that the shield has portions positioned in the apertures of the guard plate. The new drawing 7 does not clearly show the device, and it cannot be determined if the drawing is a photograph, which if it is, is not of sufficient quality so that all the details are reproducible. See MPEP 37 CFR 1.84.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rullmann et al (US 6,370,751).

Rullmann et al disclose a cover (14, 16, 18) for an axle seal aperture, the axle seal being coupled to a transmission housing, the cover comprising: a guard plate (18) having an aperture extending there through, said guard plate being adapted to engage the axle seal (20) and couple said guard plate thereto; a shield (14,16) having a first portion (16) and a detachable second portion (14), said first portion being coupled to said guard plate (see Fig 1), said shield enclosing said guard aperture when said second portion is attached to said first portion (see Fig 1), said first portion defining an aperture aligned with said guard aperture when said second portion is detached from said first portion (see Fig 1).

Rullmann et al teach the use of a cover as described above, but does not disclose a one-piece shield.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover to include a one-piece shield, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Re claim 11, said guard plate includes an annular lip adapted to be engageable with the axle seal to couple the cover to the axle seal (see Fig 1).

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8. Claims 10 11, 15-19, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halliday, Jr. et al (US 4,815,884).

Halliday Jr. et al disclose a cover (28, 30, 10, 60) for an axle seal aperture, the axle seal being coupled to a transmission housing, the cover comprising: a guard plate (28, 30) having an aperture extending there through, said guard plate being adapted to engage the axle seal (25) and couple said guard plate thereto; a shield (10, 60) having a first portion (10) and a detachable second portion (60), said first portion being coupled to said guard plate (see Fig 1), said shield enclosing said guard aperture when said second portion is attached to said first portion (see Fig 1), said first portion defining an aperture aligned with said guard aperture when said second portion is detached from said first portion (see Fig 1).

Halliday Jr. et al teach the use of a cover as described above, but do not disclose a one-piece shield.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover to include a one-piece shield, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Re claim 11, said guard plate includes an annular lip adapted to be engageable with the axle seal to couple the cover to the axle seal (see Fig 1).

Re claim 15, said guard plate includes a conically shaped section positioned adjacent said annular lip, said conically shaped section adapted to cover a portion of the axle seal (see Fig 1).

Re claim 16, said guard plate includes an annular flange positioned adjacent said conically shaped section, said guard plate aperture extending through said annular flange (see Fig 1).

Re claim 17, Halliday Jr. et al teach a cover comprising: a tubular guard structure (28, 30) having a substantially cylindrical wall portion positioned adjacent to a substantially conical wall portion (see Fig 1), said cylindrical wall portion being adapted to engage the axle seal and couple the cover to the axle seal (see Fig 1; and a shield (10, 60) having a first portion (10) and a detachable second portion (60), said first portion being coupled to said guard structure (see Fig 1), said shield enclosing one end of said guard structure when said second portion is attached to said first portion (see Fig 1), said first portion defining an aperture in communication with a passage defined by said tubular guard structure when said second portion is detached from said first portion (see Fig 1).

Halliday Jr. et al teach the use of a cover as described above, but do not disclose a one-piece shield.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover to include a one-piece shield, since it has been held that forming in one piece an article which has formerly been formed in two pieces

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and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Re claim 18 said guard structure includes a radially inwardly extending annular flange positioned adjacent to said conical wall portion (unnumbered, see Fig 1).

Re claim 19, said annular flange defines a guard aperture aligned with said first portion aperture (unnumbered, see Fig 1).

Re claim 23, said second portion includes a cylindrically shaped hollow wall (see Fig 1).

Re claim 24, said cylindrically shaped hollow wall includes a longitudinal axis aligned with a longitudinal axis of said tubular guard structure (see Fig 1).

9. Claims 12, 13, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halliday, Jr. et al (US 4,815,884).

Halliday Jr. et al disclose a cover as described above, but do not disclose the shield constructed from an injection moldable material.

It would have been obvious to one having ordinary skill in the art to modify the cover of Halliday Jr. et al from an injection moldable material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

Re claim 13, said first portion includes an outwardly extending tang (72) selectively engageable by an operator to separate said first portion from said second portion.

Re claim 21, said first portion includes an outwardly extending tang (72) selectively engageable by an operator to separate said first portion from said second portion.

Response to Arguments

10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

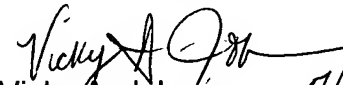
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (571) 272-7106. The examiner can normally be reached on Monday-Friday (7:00a-3:30p).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571) 272-6217. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Vicky A. Johnson 7/31/84
Primary Examiner
Art Unit 3682

DoNot
Enter
my 7/31/84

Low cost shipping cover and rock guard for vehicle transmissions

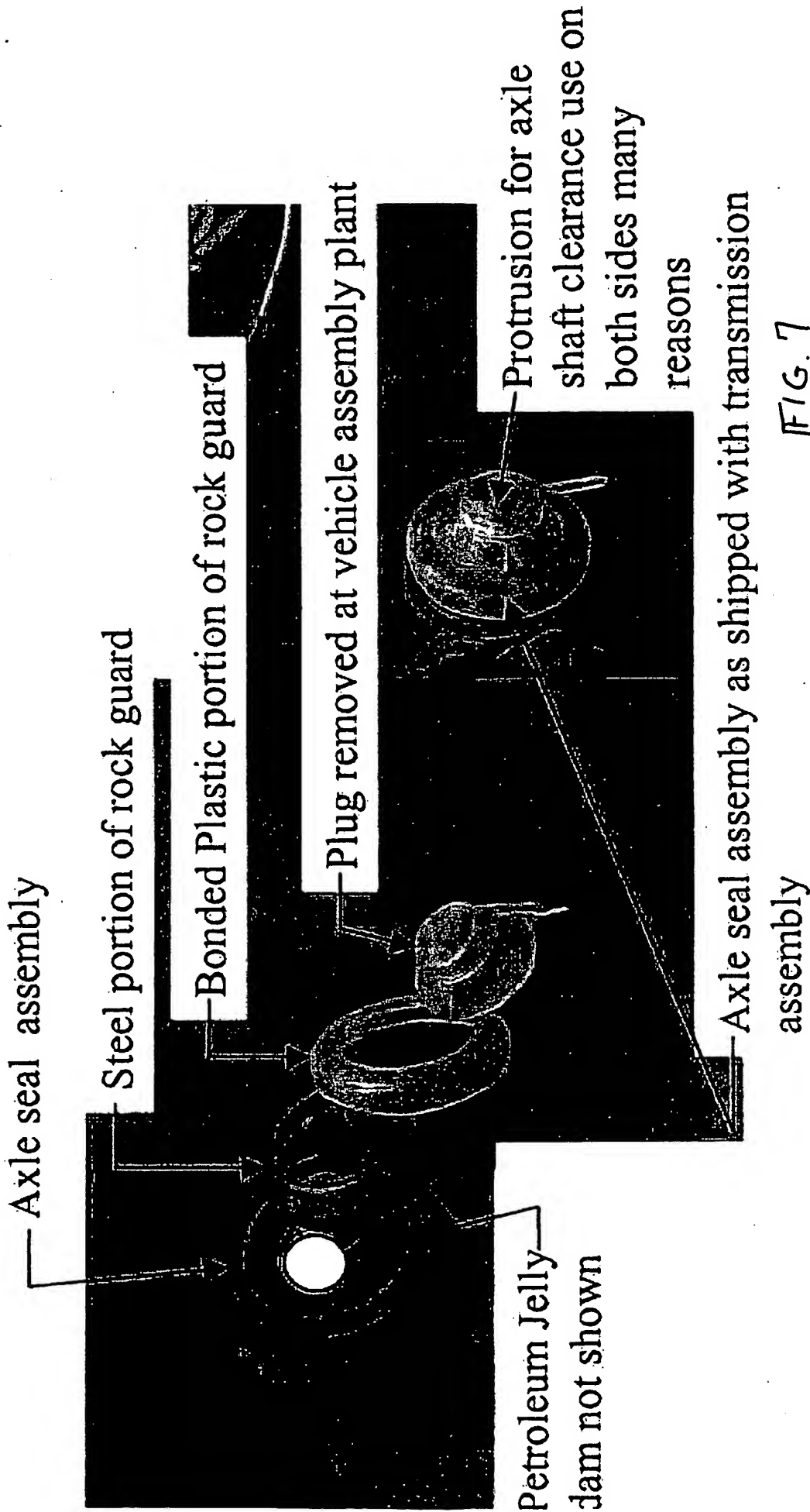


FIG. 7